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The issue of euthanasia in Greece from a legal viewpoint

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ABSTRACT

Modern Greek society appears to be split regarding the legalization of euthanasia. The Greek Orthodox Church maintains a negative attitude. Research shows that some forms of euthanasia are carried out "behind closed doors". There is no specific legal provision. The government avoids bearing the political cost of regulating this marginal issue. According to the dominant view of Criminal Law jurists, some forms of euthanasia are considered permissible *de lege lata*, under certain conditions. The safety of the concurrence of these conditions, safeguarding of the acceptability of forms that are considered permissible and – mostly – the need to regulate the prohibited forms in exceptional cases, all force the legislators to promptly fill any legal vacuums.

1. Introduction. Euthanasia in Greece: a legal and social problem

In Greek Criminal Law, euthanasia is defined as[1] providing a painless death to the patient who is dying due to a certain disease, injury, or old age. In a wider consideration, the concept of euthanasia also includes the termination or non-prolongation of the lives of neonates suffering from severe malformations (early euthanasia), as well as termination of the lives of those being in a persistent vegetative state (a coma that may be prolonged for a long time as a result of the advances in medical technology). In particular, euthanasia includes[2]: behaviour of a third party (physician), which may either be an act or a failure to act, a patient who is dying or is terminally and irreversibly in a coma, and a painful or undignified state of the patient. The behaviour of the third party has a cause–effect relation with the acceleration of this (inevitable) death, so as to relieve the patient from pain or help him die with dignity.

Although there is no unanimity in science, death phase is called the phase when there are two situations[3,4] considered to be *sine qua non*: (1) an irreducible damage of an organism, a state of permanent and final loss of the vital functions of an organism, so that this state cannot be reversed with the use of all available medical means, and (2) death is expected to come within a short period of time.

The legal theory in Greece follows the typical distinction among the following: (1) pure euthanasia (*pura*), (2) direct active euthanasia, (3) indirect active euthanasia, (4) physician-assisted suicide (participation in suicide), (5) passive euthanasia by consent (bilateral), (6) passive euthanasia by consent (unilateral), or unilateral delimitation of a physician's duty, (7) the (so-called) early euthanasia, and (8) interruption of any artificial life-support means, when a physician's duties have been exhausted. In addition, euthanasia is divided into voluntary and involuntary euthanasia. Involuntary euthanasia (against the patient's will) is a priori considered unacceptable. A prerequisite for the acceptance of a form of euthanasia either *de lege lata* or *de lege ferenda*, is the existence of the patient's valid and (fully) informed consent. At least, when the expression of such consent is not possible, the opposition of the patient should not be inferred.

Criminal Law in Greece has no special regulations justifying or even allowing any act of euthanasia. In contrast, the recent Act 3418/2005 (Code of Medical Ethics) explicitly states in article 29§3 that, even when the patient has a will to die and his/her death is expected within a short period of time, this does not constitute sufficient grounds for justifying any act that may cause his death. Criminal Law theory in Greece has occasionally suggested *de lege ferenda* solutions to the issue of euthanasia, but mostly attempts to deal with this issue *de lege lata*, interpretatively, even trying *contra legem* interpretations of the criminal (and civil) laws in force, as well as of the corresponding dispositions of the Constitution.

Despite the fact that relevant research shows that several practices of euthanasia have been reported to take place without receiving any publicity (Newspaper "Ta Nea", 2.12.2000, 22.2.2002, 18.5.2004), no such case has ever appeared before the Greek courts so far, consequently, there is no relevant case-law established. Modern Greek society seems to be split regarding the issue of accepting euthanasia. In conjunction with the fact that

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this issue has never been seen as a socially controversial issue and the fact that the Greek Orthodox Church[5] has an clear position against all forms of euthanasia, advocating the protection of life to the utmost degree, considering life as a holy gift from God, on which He is the only one to decide. The Greek government avoids taking this difficult and marginal issue of reconciliation of the wider recognition of the right to self-determination with the maximum protection of human life before the Parliament through a relevant legislative proposal, thus avoiding the social conflict this implies.

The Greek Orthodox Church is clear in its position as an ardent opponent of any attempt made to decriminalize euthanasia. The Ad Hoc Committee on bioethical issues, which was appointed by the Holy Synod on 14.12.2000, rejected all forms of causing death by human choice, characterizing euthanasia as a "Blasphemy" against God and an insult to the medical profession per se.

From a social point of view, there seems to be wide consent, at least with regard to indirect active euthanasia and voluntary passive euthanasia. Th. Papapetropoulos (Newspaper "Ta Nea", 22.2.2002), Professor of Neurology in the University of Patras, showed in a survey with 1960 respondents (physicians, medical students, lawyers, and judges), that there has rarely been any support for direct active euthanasia or physician-assisted suicide, while 62% of physicians, 58% of lawyers and 63% of judges, gave a negative response to the question whether they had the slightest hesitation regarding passive euthanasia. As for the medical students, this percentage ran into 70%. In a sample of 1148 physicians, one in four admitted that he had performed, or at least participated in passive euthanasia. Some reputable scientists, such as D. Trichopoulos, Professor of Epidemiology at the Universities of Harvard and Athens, Ch. Avramidis, elected President of the Hellenic Union of Physicians (Newspaper "Ta Nea", 2.12.2000), as well as the aforementioned Professor, Th. Papapetropoulos, argue that euthanasia is a frequent phenomenon in modern Greek society, although this issue is never referred to.

Another survey reports that, 7 out of 10 physicians and 8 out of 10 nurses, point out that they do not take the initiative in disconnecting the life-support machines, 60% for moral reasons, 10% of nurses and 12% of physicians for fear of the law. However, 80% of respondents think that such machines do not allow for a dignified death (Newspaper "Vradini", 24.4.1998, Survey of the Medical School of Athens and the Laboratory of Hygiene and Epidemiology, Athens Faculty of Medicine).

2. Constitutional issues

Finding solutions to any constitutional problems and conflicts is of paramount importance in order to deal with the issue of euthanasia (e.g. art. 2 § 1 of the Greek Constitution on human dignity and art. 5 § 1 of the Constitution on the free development of one's personality, along with the Code of Medical Ethics, Act 3418/2005, art. 11 and art. 12, and the European Convention on Human Rights and Biomedicine, Oviedo, 1997, which was ratified and now constitutes national law by virtue of Act 2619/1998, i.e. respect for the patient's free will, self-determination and self-rule, through the constitutional protection of human life, considering the right to protect human integrity, privacy and family life etc.). The advocates of euthanasia defend a wider right to self-determination. Some think that the right to self-determination, when it comes to life per se as judged by the living person, is delimited by the dignity of that person,[6] at least as long as the sick person is not "objectified" in any way (as in the case of irreducible vegetative states), while others think that it is only delimited by the dignity of a third party.[7] It has been argued that there is a right to death in extreme situations,[8] as well as non-existence of such a right in a society where a person is considered to be a "co-participant" and his right is a power given by a society, even a liberal one.[9,10] The constitutional science in Greece has even accepted[11–13] the existence of a right to death (in a wider interpretation of the right to life), as well as the fact that an eventual legalization of euthanasia will not conflict with the Constitution. In the attempt made not to turn the right to life into an obligation to live, it is worth noting that the European Convention on Human Rights (ECHR), in its jurisprudence (Mrs. Pretty's case, 2002) accepted a limitation of the right to death when it comes to "assisted suicide" (when the patient is incapable of committing suicide due to his condition), through a narrow interpretation of the relevant articles; what has also been supported is the limitation of the power to renounce a constitutional right to life due to the factor of human dignity of the very same person, at least as long as life itself has not already been reduced to an irreducible vegetative state. In addition, article 2§1 of the Constitution was considered to be the ground for liberating the entire issue of euthanasia. Certainly, a regulation of the issue *de lege ferenda* can hardly institute an *ex officio* right to death, solely recognizing a physician-centered[11] model of permissibility under strict conditions (mature – well-considered – valid request of the patient, notification of the Public Prosecutor's Office, etc.), as in the highly liberal legislations of Belgium and the Netherlands (2002).

The right to death may be widely or narrowly accepted, in relation with the pathological state of the patient (and his "imminent" death). In the field of euthanasia, there is a concurrence of the physician's duty to provide help, the patient's right to self-determination, and the duty to protect the most important and legally-protected right to life.

3. Forms of euthanasia

3.1. Genuine or pure (***pura***) euthanasia or euthanasia in the literal sense

This is a very narrow grammatical interpretation of the concept of euthanasia. According to this interpretation, both physical and mental relief is offered to the patient without hastening death, which is inevitable. Through the application of this form of euthanasia, the patients' wishes are restricted, so as to apply other, inadmissible forms of euthanasia, e.g. direct active euthanasia.[3] According to Greek Law, this form is not only admissible, but also imperative. This is clearly and explicitly stated in article 29§1 of the Code of Medical Ethics (Act 3418/2005). Moreover, its non-application may create criminal liability as long as physical and mental suffering may constitute bodily injury (article 308 of the Penal Code) and torture[14] (art. 137 A § 1 Penal Code), provided that the patient is deliberately left to suffer for a long period of time. In addition, the omission of the physician, who has a "special legal obligation" towards the patient he has undertaken to treat, is legally (and socially) equivalent to an act (positive action). The basis of human dignity, which is safeguarded by the Constitution (art. 2 § 1 of the Constitution), self-determination (art. 5 § 1 of the Constitution) and personality (art. 57 of the Civil Code), are violated. In any case, the medical world is not sufficiently educated to provide physical and mental support to the dying patient.[3]

3.2. Direct euthanasia

This refers to the hastening of inevitable death, through an intentional act, so as to relieve the patient from his sufferings. Such an act – as in most European countries – remains wrongful both in the first and final degree. This is the most unacceptable form of euthanasia. In the conflict between the interest in protecting

human life and the patient's interest in being relieved from pain, the protection of life has supremacy, not only because it is considered to be protected by law in an absolute way – this is now a minority view in Greek Criminal Law[15] – but also because self-determination is delimited in the offence against another person and in the offence against "another" life[7]; even if the perpetrator fully surrenders to the valid and fully informed will of the victim. Previously, in Greek Criminal Law science, it was argued that direct active euthanasia may be justified, thus removing the wrongful character of the act, with no need to enact a special provision (*de lege lata*) since the act is performed in the "best interest of the dying person".[16,17]

This view has not been widely supported. In modern Criminal Law, those declaring for the permissibility of direct active euthanasia under certain conditions in some marginal-extreme situations, propose *de lege ferenda* solutions. Thus, the decriminalization of all acts of euthanasia has been proposed[18] subject to the following conditions: (a) there is an incurable, prolonged disease, (b) the patient insistently and seriously demands his killing due to the pain he is suffering from, and (c) the execution of euthanasia has been unanimously decided by a council consisting of the attending physician, one forensic surgeon, one Professor of medicine in a specialty related to the disease, the Chief Public Prosecutor of the area where the patient's place of residence is situated, and his next of kin. Another suggestion[19,20] refers to the possibility of a judicial pardon in case of homicide upon request (art. 300 of the Penal Code), subject to the following conditions: (a) the patient suffers from a physical incapacity to cause his death, and (b) three physicians from the National Health System have unanimously endorsed the following: (1) the patient has to undergo great suffering until the end, (2) the death of the patient is imminent, e.g. within the next 24 h, and (3) all medical means available to relieve him from pain have already been used and can no longer give him relief.

De lege lata the issue of euthanasia in Greece is regulated by article 299 (common homicide) and article 300 of the Penal Code (homicide upon request). In the context of the preferential form of homicide, provided for in article 300 of the Penal Code, all forms of direct active euthanasia are not only totally unjustifiable, but an act of euthanasia can only be classified in this form resulting in much smaller sentences compared with common homicide, i.e. imprisonment from 10 days to 5 years, if the following requirements are met: (1) there is a "significant and persistent" request of the patient, (2) there is an incurably ill patient, and (3) the perpetrator has decided and committed his act out of mercy, after repeated appeals of the patient. Nothing is said about the case where the perpetrator is a physician and the victim is a patient who is dying painfully. It is deemed that article 300 of the Penal Code does not provide[17] for the problem of direct active euthanasia. In addition, the new Code of Medical Ethics (Act 3418/2005), in art. 29 § 3, is clearly and explicitly opposed to the acceptance of direct active euthanasia, providing that the patient's wish to die when his death is expected within a short period of time, does not constitute any grounds for justifying any act accelerating his death.

Certainly, there is always the possibility of leaving an act of direct active euthanasia unpunished, apart from the affirmation of the final wrongfulness of the act, through the mechanism of excuse. This is an ad hoc judgment and can hardly ever be applied.

3.3. Indirect active euthanasia

This is a medically-acceptable medical act carried out to give relief to the patient from pain; however, it may result more or less in the possible side effect of causing or hastening death.

It is generally considered permissible, not only in Greece but in all other European countries as well. In an Anesthesiology Convention held in 1957, the Roman Catholic Church had accepted such an act cannot be considered prohibited, as long as there is a relationship of analogy between a reduction in pain and the risk of shortening life. In Greek Criminal Law, there is a general acceptance of the permissibility of indirect active euthanasia, scientists, however, are split regarding the theory used for its justification.

Some Criminal Law jurists favour[2] the possibility of removing its final wrongful character through a *mutatis mutandis* application of article 25 of the Penal Code on the state of necessity where the legally-protected right to life is in conflict with that of relief from pain, when there is a previous informed consent of the patient, or at least no opposition is inferred. Other Criminal Law jurists think[7] that this is difficult to apply, because: (1) in a state of necessity, the legally-protected good that is saved must be considerably superior to that sacrificed. "Quality of life" is not superior to life itself,[21] and (2) this might easily favour the justification of direct active euthanasia as well. The solution they propose[7] is the view that the act of indirect euthanasia is a medical act, which, under certain conditions, may gather the elements of a "permissible dangerous act" and, consequently, it may not be considered wrongful. Such conditions are: (a) the act is deemed acceptable based on the findings of medicine, (b) there is a full previous instruction of the patient – or, in case of his incapacity, information given to his next of kin– regarding the possible adverse effects of the treatment, (c) the patient has given his consent, and (d) the method is applied by a specialized physician, *lege artis*.

3.4. Physician-assisted suicide

It marginally comes under the concept of active euthanasia. It is different from direct active euthanasia in that the last action leading to death ("non return point") is not done by a third person but rather the patient himself.

In Greece, participation in suicide is a criminal offence, unlike Germany or Finland, punished according to article 301 of the Penal Code. In Criminal Law science, it has rarely been argued that the individual has basically an "obligation to live".[9,10,15] Attempted suicide remains – according to this view – a wrongful act in the conscience of the lawmaker[9,10] though unpunished, since the prospective suicide has reserved the heaviest sentence for himself. The offence of article 301 of the Penal Code is considered to be participatory. In Greek Criminal Law, however, a more widespread view is the more liberal-view that the protection of life and physical integrity are personal goods existing "for the sake" of their holders, not "against" them.[8,18] The Constitution does not force the individuals to respect their own rights. Indeed, several jurists support the existence of a "right to death",[8,22] which stems from the right to self-determination, which is safeguarded by article 5§1 of the constitutional free development of one's personality. This group of Criminal Law jurists considers that suicide is not an act in the technical sense of the word (*actus reus*), since it is not addressed to another individual. Suicide is not a wrongful act, and every participation in suicide is not a wrongful act.[22–24] Participation has a wrongful character depending on that of the main perpetrator. According to this view, article 301 of the Penal Code has an exceptional character: participation in suicide is only punished when the third party basically enforces his own will, guides the suicide, takes advantage[7] of his severe weakness, without the suicide becoming, however, an "instrument" of the third party.

Article 301 of the Penal Code is narrowly construed in the theory of Criminal Law in Greece,[2,7] so that acts of assistance to the suicide preceding the commission of suicide e.g. administration of the means required to commit suicide by the physician, are thought to remain on the "fringe" of the criminal process, therefore, they remain unpunished.

In the context of the issue of medical assistance provided to a suicide, the determining factors are the following: (1) how the

respectable wish of the suicide is determined despite his weakness, so that the field of application for indirect perpetration is accordingly broadened or narrowed, and (2) the hard distinction between perpetrating and participatory behaviour. In Greece, when it comes to perpetration, the so-called typical objective theory is adopted along with a right approach to the concept of causal link. The corresponding theory in Germany (''theory of domination over the act'') is less safe for Criminal Law (*nullum crimen nulla poena sine lege*) though more flexible in borderline issues of delimitation between perpetrating and participatory behaviour, as in individual issues referring to the problem of euthanasia. What has been proposed in Greek Criminal Law is to allow the penetration of certain elements taken from the theory of domination over the act into the typical objective theory prevailing in Greek Criminal Law.[3,25]

3.5. Passive euthanasia

According to this form of euthanasia, the acceleration of death that is imminent – relief of the patient – occurs through a passive attitude of the physician (omission), so that the supportive treatment is either not applied from the very beginning or, if it has already been applied, it is not continued.

One can draw a distinction among three different situations:

3.5.1. The patient or his next of kin ask for the application of the medical treatment

It is generally accepted that, in this case, the physician should do whatever is medically appropriate (supply of the ''means'', medicine of ''means'', according to a specialized medical standard depending on the case), in order to interrupt the course to death.[7,19] If the physician ceases to provide his services according to article 9§4 of the Code of Medical Ethics, as long as he disagrees with the adoption of the treatment, then he should take all measures required, so that the life and health of the patient are not in immediate danger.[1] The National Bioethics Commission has adopted a similar position.[26] Otherwise, it is possible that the physician will be held liable for homicide through omission.

3.5.2. The patient refuses to start or continue the treatment that may prolong his life

It is widely accepted – though not unanimously, at least when life is in immediate danger – in Greek Criminal Law[2,7,15] that the valid and fully informed refusal of the patient relieves the physician from his ''special legal obligation'' (this expression is used to approach what German Criminal Law and case-law call ''duty of guarantee'').[3] Thus, the objective element (*actus reus*) of homicide is not fulfilled. Certainly, this position may be criticized[3] in view of: (1) the vague and indiscernible limits between active and passive euthanasia (given that, mostly at the moral level, it is argued that some forms of active euthanasia are more lawful than passive euthanasia), (2) the existence of mixed-type acts, and (3) the principle of equivalence between an act and a failure to act, when there is a ''special legal obligation'' of the failing person (e.g. undertaking of treatment by the physician) in Criminal Law.[27]

In Greek Law, even prior to the application of the Code of Medical Ethics (Act 3418/2005), where articles 11 and 12 require the previous informed consent of the patient for the physician to intervene even in cases of emergency, the physician may freely intervene only when consent cannot be obtained (art. 12 § 3), the dominant role of the patient's consent was accepted[3] in interpretations (article 2 §1 of the Constitution and article 5 §1 of the Constitution on the protection of human dignity and personality, article 7 §2 of the Constitution, the previous-vague-legislative framework regarding medical ethics: Royal Decree no. 25-5/6.7.1955, Emergency Law 1565/ 1939, International Declarations, etc.), explicitly enough in article 47 of Act 2071/1992, which only concerned, however, the physicians of the National Health System, and in article 6(a) of Act 2619/1998, which was the act ratifying the European Convention on Human Rights and Biomedicine of Oviedo (1997). The National Bioethics Commission has adopted[26] a similar position (2006). Some Criminal Law jurists supporting the respectable refusal of the patient accept (though not unquestionably) that, if, nevertheless, the physician starts or continues the medical treatment required to prolong the patient's life, then he has no criminal liability based on the *mutatis mutandis* application of article 25 of the Penal Code (state of necessity), since he preserves the supreme asset of life.[7] However, the physician not only infringes upon personal freedom at the level of Criminal Law (article 330 of the Penal Code) but he also infringes upon the wider constitutional right to self-determination probably along with other rights as well, e.g. freedom of religion, etc. Certainly, it is accepted that the dignity of a third party rather than that of the patient may restrict his right to self-determination.[7] It has also been argued that provisional measures can be taken against the freely intervening physician (articles 5 § 1 and 57 of the Civil Code, according to the procedure provided for in article 682 ff. of the Code of Civil Procedure).[8] It is worth noting that some Criminal Law jurists follow a conciliatory – though basically liberal-view, considering that the patient's refusal should be respected with the exception of some borderline cases, and that the physician commits the crime of unlawful violence (article 330 of the Penal Code) only when he also uses physical violence.[28] Civil liabilities are also born. The concept of ''unlawful'' is meant in a wide sense by civil law jurists, according to article 914 of the Civil Code, which provides that whoever unlawfully and culpably causes damage to another, must compensate the injured party for the damage so caused.[29]

The jurists[30] who support the views of the Greek Orthodox Church accept a restricted right to self-determination which is not extended to the beginning and the end of life. They consider respect for the patient's refusal as hetero-determination: this is not respect, but rather an intervention to the patient's personality.[31] Self-determination is strictly considered to be a personal asset. The intervention of a third party, even after consent, is considered to be annulling it. Such consent is deemed contrary to accepted principles of morality. They accept a wide interpretation of the possibility given by the Oviedo Convention (Act 2619/1998, article 8) for a free intervention in case of emergency, based on the principle *in dubio pro vita*. It is generally considered that the aim of the Oviedo Convention is to provide protection of life and integrity of the human being against medical and biological advances, rather than to excessively strengthen self-determination.[30] In the same context, a wider duty of care for the physician who has already undertaken to provide treatment is accepted; therefore, the valid refusal of the patient cannot abolish it, and the free intervention of the physician does not constitute an infringement of the rights of personality and personal freedom. The increased obligation of the physician to provide care, along with the legally-protected right of life and the confidential character of the physician-patient relationship, are all considered to be reasons proving that the treatment concerns both the patient and the physician.[30] Thus, a medical paternalistic view is supported. Even article 8 § 1 of Act 2251/1994 on the special professional liability of the attending physician providing services, regardless of any previous contractual relationship, is widely interpreted, so that the term ''rendering of services'', which, from the very beginning, implies a positive act, is also widely interpreted so as to extend to the physician's failure to act, when there is a valid refusal of the patient.[30]

A controversial issue is the issue of respect for the patient's refusal to receive treatment, when the patient expresses his refusal, but subsequently goes into a coma terminally and irreversibly. This refusal seems to be respected by article 29 § 2 of the Code of Med-

ical Ethics (Act 3418/2005), where it is stated that, at the end of human life, the physician takes the wishes expressed by the patient into account, even if, at the time of intervention, the patient is no longer able to repeat them. However, unlike other European countries, such as Germany (in theory) and Austria where the binding nature of such wishes under certain conditions was made law in 2006 (PVerfG), in Greek legal system and Criminal Law, the so-called "living wills" are not accepted; occasionally, it has been argued, however, that they are not completely insignificant and may be considered "evidence of presumed consent".[8,32] The 2006 Austrian Act on living wills provides that, when the strict conditions for them to have a binding nature are not met, then they are grounds for presumed consent. In these countries (Germany, Austria), however, presumed consent plays a significant role. In Germany, both science and jurisprudence of the Supreme Court (BGH St 40,257 etc.) have recognized that it is possible that presumed consent, which is constituted under strict conditions, set the boundaries of the physician's duty, even in phases prior to the death phase, i.e. for the patient being in a persistent vegetative state. In Greece, law does not recognize a demarcating role for presumed consent which is certainly a mechanism for widely exercising the right to self-determination following the final incapacity of the patient, as well as a mechanism for manipulating him and an occasion for abuses, by hastening his death[3] against life but only in favour of it. As for "living wills" – although article 29 § 2 seems to leave a vague prospect – it is quite impossible that their binding nature will be recognized by law in the near future. In any case, even if they were to be accepted, it is deemed wiser that they should only be respected as long as they were drawn up in view of these special life-threatening conditions[3] and, as long as the patient has duly been informed of the medical treatment that may be adopted and its effects.

3.5.3. Passive euthanasia when the patient is unable to decide or validly express his will

An example of such cases is when the patient is in a persistent and irreducible coma. As in other European countries (e.g. Germany), Criminal Law scientists in Greece accept that physicians are not always obliged to do whatever is technically feasible, preserving life "at all costs".[3] When there is a need for immediate medical intervention and the patient is in a state of incapacity to express his will, the legislator seems to consider[7,8] that the opinion of the close relatives is not binding for the physician, who may freely proceed to the administration of medical support (article 12 §3, Act 3418/2005, Code of Medical Ethics). In case of urgent need, the physician must offer the appropriate medical support. If he fails to comply with this obligation he would be committing homicide through omission. Although opposite views have been expressed on this issue, both by the National Bioethics Commission[26] and Criminal Law jurists,[2] an issue that remains controversial is if and when the physician's duty is exhausted prior to the occurrence of brain death. Previously, a view expressed in Greek Criminal Law[33] was that a physician's duty is exhausted when prolongation of life is only possible for a "short period of time" with parallel prolongation of agony. The ambiguity of this "short period of time" along with the possible lack of agony in comatose state, weaken this criterion.

The criterion of "meaningless" or "fruitless" treatment is ambiguous and dangerous for an inadmissible qualitative evaluation of remaining life, as well as the – widespread in international literature[3] – criterion of the final and irreversible loss of self-realizability (communication, reaction, etc.), i.e. occurrence of cortical death. The risk of abuses is obvious e.g. to achieve transplantation, financial, and social purposes, acceleration of death, etc. Evidently, Criminal Law jurists in Greece have supported the criterion of delimitation of the physician's duty in cases infringing upon the heart of human dignity,[8] that is objectification of the human beings, reducing them into a "medium" for serving the goals and interests of third parties, e.g. experimentation, etc. Other Criminal Law jurists question,[1] however, the possible infringement of human dignity through the process of death, as painful as it may be. It was argued that, when the natural – biological functioning of the organism[1,4,7] can no longer be preserved, so that, based on the advances in medicine, it can be anticipated that the organism will function again naturally, then the physician's duty to provide support ceases.[34] The National Bioethics Commission[26] estimates that, when there is no hope of recovery, the artificial prolongation of life may be considered as "damage", and, certainly, the patient may experience it as such.

3.6. The withdrawing of artificial life-support means

When the withdrawing of the life-support machine requires a positive action (muscle action), which is accelerating the patient's death through a cause–effect relation, then, from an ontological point of view, this is a form of direct active euthanasia. It is argued that, as such, it is prohibited.[1,7,15] And that this is not a form of "euthanasia", since the patient who is connected to the life-support machine, does not usually suffer.[1] However, another view supported in Greek Criminal Law is that the act of disconnecting the machine is of a mixed nature as it is both an act and an omission, where "weight" (social demerit) is laid on the omission.[2] This view approaches the theory of "omission made through an act", which was formulated in Germany by Roxin and was widely accepted, though not uncritically.[3]

3.7. The so-called "early" euthanasia of neonates suffering from severe malformations

In Greek Criminal Law, it is unanimously accepted that the killing of these infants is not at all different from the other forms of homicide. The rules in force for the other forms of euthanasia apply to these cases as well. The lives of these neonates are considered of equal worth to the life of any other human being.[3] Here, the term "euthanasia" is used in a very wide sense, since the newborn do not always suffer, their death is not imminent, and they are neither able to express their will nor have they ever expressed it (so as to constitute a presumed consent).[3] It was also argued that, due to the fact that they lack independence, the neonate resembles a mature fetus.[6] Often, some practices of "early" euthanasia conceal the discharge of the family or the society from the necessary burdens under the veil of mercy. It is worth noting that, as for the ad hoc judgment on excuse (removal of imputation), the application of article 32 of the Penal Code (state of necessity removing imputation, exceeding criminal liability that a human being can avoid) is unacceptable,[1] since the legally-protected rights in conflict are not similar, but rather imponderable, i.e. life and quality of life, as third parties perceive it, rather than the patient-living being. In very extreme-exceptional situations of emotional charge of the perpetrator, excuse may be accepted (article 34 of the Penal Code), when, due to his strong emotions, the perpetrator is unable to perceive the wrongfulness of his act, or act according to his conscience.

4. Conclusions

In Greek Criminal Law, the following acts are not considered to be wrongful, not even in the beginning: (1) pure euthanasia, (2) passive euthanasia by consent, (3) abstinence of the physician from the artificial prolongation of life, as long as the patient has not expressed his opposition (or this in not even inferred). As for indirect active euthanasia, it is initially considered wrongful, but its wrong-

fulness is finally excused (when carried out on certain conditions). The following acts remain wrongful: (1) direct active euthanasia (disconnection from the life-support machine oscillates between a finally wrongful and not wrongful act), (2) passive euthanasia, when the patient is in a permanent state of incapacity to express his valid will, but it is possible to maintain the natural–biological function of the organism (i.e. there are prospects of improvement), (3) provision of substantial medical assistance to the painfully dying patient who wishes for his self-killing, to commit suicide. The same is true for the physician convincing the patient to commit suicide.

It is evident that there is a need to cover the legal vacuum in Greece, with regard to the issue of euthanasia. The National Bioethics Commission also ascertained some legal vacuums, in its recent recommendation for the artificial prolongation of life, especially in cases of disagreement between physicians and patients, or among the patient's relatives. As for the forms of euthanasia that are considered wrongful, it is now more than ever, especially after the Oviedo Convention (Act 2619/1998) and the Code of Medical Ethics (Act 3418/2005), and given the rapid technological advances in medicine, imperative to regulate these issues. Besides, for the forms of euthanasia that may be finally considered lawful *de lege lata*, it is necessary to provide an explicit regulation, so as to ensure there is transparency and safety regarding the concurrence of requirements under which one form of euthanasia is considered permissible. In addition, the permissibility of some forms of euthanasia *de lege lata* is not indisputable. In any case, it is necessary to fill any legal vacuums, because, at least as far as the criminal liability of the physician is concerned, the principle *nullum crimen nulla poena sine lege*, which is protected by the Constitution, must be respected.

In addition, various polls have shown that the Greek population is split in terms of the legalization of euthanasia: 41% of the respondents were in favour of it, in a survey published on the Newspaper "Ta Nea", on 18.11.1996. In another survey with 1400 participants (♂ = ♀), aged 70–89 years, 95–96% were opposed to euthanasia. (Newspaper: Efimerida tou Kosmoutis Ygeias, 15.2.2002).

The regulation of this issue in Greece is deemed necessary now more than ever, even though such a bioethical issue can hardly be regulated by law in every sense.

Conflict of Interest

In conjunction with the fact that this issue has never been seen as a socially controversial issue and the fact that the Greek Orthodox Church has an clear position against all forms of euthanasia, advocating the protection of life to the utmost degree, considering life as a holy gift from God, on which He is the only one to decide. The Greek government avoids taking this difficult and marginal issue of reconciliation of the wider recognition of the right to self-determination with the maximum protection of human life before the Parliament through a relevant legislative proposal, thus avoiding the social conflict this implies.

In the field of euthanasia, there is a concurrence of the physician's duty to provide help, the patient's right to self-determination, and the duty to protect the most important and legally-protected right to life.

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